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**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

NATALIE MURDOCK, on behalf of herself
 and all others similarly situated,

Plaintiff,

vs.

WESTERN DENTAL SERVICES, INC. and
 DOES 1 through 10, inclusive, and each of
 them,

Defendants.

Case No. **'12CV2449 W BLM**

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF:

1. NEGLIGENT VIOLATIONS OF
 THE TELEPHONE CONSUMER
 PROTECTION ACT [47 U.S.C.
 §227 ET SEQ.]
2. WILLFUL VIOLATIONS OF
 THE TELEPHONE CONSUMER
 PROTECTION ACT [47 U.S.C.
 §227 ET SEQ.]

DEMAND FOR JURY TRIAL

Plaintiff, Natalie Murdock ("Plaintiff"), on behalf of herself and all others similarly
 situated, alleges the following upon information and belief based upon personal knowledge:

1. Plaintiff brings this action for herself and others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Western Dental Services, Inc. (“Defendant” or “WDS”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Southern District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)* because Defendant does business within the state of California and maintains a business office in San Diego County.

4. Plaintiff, Natalie Murdock (“Plaintiff”), is a natural person residing in California and is a “person” as defined by 47 U.S.C. § 153 (10).

1 5. Defendant, Western Dental Services, Inc. (“Defendant” or “WDS”), provides
2 dental services to thousands of consumers throughout California, Arizona and Nevada and is a
3 “person” as defined by 47 U.S.C. § 153 (10).

4 6. The above named Defendant, and its subsidiaries and agents, are collectively
5 referred to as “Defendants.” The true names and capacities of the Defendants sued herein as
6 DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who
7 therefore sues such Defendants by fictitious names. Each of the Defendants designated herein
8 as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of
9 Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants
10 when such identities become known.
11

12 7. Plaintiff is informed and believes that at all relevant times, each and every
13 Defendant was acting as an agent and/or employee of each of the other Defendants and was
14 acting within the course and scope of said agency and/or employment with the full knowledge
15 and consent of each of the other Defendants. Plaintiff is informed and believes that each of the
16 acts and/or omissions complained of herein was made known to, and ratified by, each of the
17 other Defendants.
18
19

20 **FACTUAL ALLEGATIONS**

21 8. Beginning in or around November of 2011, Defendant contacted Plaintiff on her
22 cellular telephone, (562) 686-4340, in an attempt to collect an alleged outstanding debt owed
23 by her former roommate, Jen Simmer.
24

25 9. Defendant called Plaintiff from the following telephone numbers: (714) 361-
26 2381; (877) 703-4110; (866) 620-8394; (800) 936-9030; (877) 703-4109; (866) 620-8390;
27 (877) 703-4111; (866) 620-8392; (866) 901-8579; and (866) 901-8579.
28

 10. Defendant placed its collection calls to Plaintiff’s cellular telephone constantly

1 and continuously, varying from several calls a week to calling on a virtual daily basis. For
2 illustrative example, Defendant called Plaintiff multiple times on January 1, 2012; January 18,
3 2012; February 20, 2012; March 5, 2012; March 6, 2012; March 7, 2012; March 12, 2012;
4 March 13, 2012; March 14, 2012; March 15, 2012; March 19, 2012; March 21, 2012; March
5 22, 2012; March 27, 2012; March 28, 2012; March 29, 2012; April 2, 2012; and April 3, 2012.
6

7 11. Defendant used an “automatic telephone dialing system”, as defined by 47
8 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt allegedly owed
9 by Jen Simmer.

10 11. Defendant often left voicemail messages on Plaintiff’s cellular telephone if
11 Plaintiff did not answer Defendant’s calls. In these messages, Defendant utilized an “artificial
12 or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).
13

14 12. Defendant’s calls constituted calls that were not for emergency purposes as
15 defined by 47 U.S.C. § 227(b)(1)(A).
16

17 13. Defendant’s calls were placed to telephone number assigned to a cellular
18 telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
19 227(b)(1).
20

21 14. Plaintiff has spoken with several of Defendant’s employees and demanded
22 Defendant’s employees to cease all further communications with Plaintiff as she is not the
23 debtor of the alleged debt.

24 15. Plaintiff spoke with “Michelle” and “Victor” in the Refund Department;
25 “Edwin” in the Billing Department; and “Mercedes” and demanded that Defendant cease
26 further communications with Plaintiff as she is not the debtor of the alleged debt.
27

28 16. Defendant is aware that Plaintiff does not owe the debt; however, Defendant

continues to call Plaintiff and attempt to collect the debt.

17. Plaintiff is not a customer of Defendant's services, does not owe any sum of money to Defendant and has never provided any personal information, including her cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

18. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within California, Arizona and Nevada who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

19. Plaintiff represents, and is a member of, The Class, consisting of All persons within California, Arizona and Nevada who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

20. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in

1 the expeditious litigation of the matter.

2 21. The Class is so numerous that the individual joinder of all of its members is
3 impractical. While the exact number and identities of The Class members are unknown to
4 Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is
5 informed and believes and thereon alleges that The Class includes thousands of members.
6 Plaintiff alleges that The Class members may be ascertained by the records maintained by
7 Defendant.
8

9 22. Plaintiff and members of The Class were harmed by the acts of Defendant in at
10 least the following ways: Defendant illegally contacted Plaintiff and Class members via their
11 cellular telephones thereby causing Plaintiff and Class members to incur certain charges or
12 reduced telephone time for which Plaintiff and Class members had previously paid by having to
13 retrieve or administer messages left by Defendant during those illegal calls, and invading the
14 privacy of said Plaintiff and Class members.
15

16 23. Common questions of fact and law exist as to all members of The Class which
17 predominate over any questions affecting only individual members of The Class. These
18 common legal and factual questions, which do not vary between Class members, and which
19 may be determined without reference to the individual circumstances of any Class members,
20 include, but are not limited to, the following:
21

- 22 a. Whether, within the four years prior to the filing of this Complaint,
23 Defendant made any collection call (other than a call made for
24 emergency purposes or made with the prior express consent of the called
25 party) to a Class member using any automatic telephone dialing system
26 or any artificial or prerecorded voice to any telephone number assigned
27 to a cellular telephone service;
28 b. Whether Plaintiff and the Class members were damages thereby, and the
extent of damages for such violation; and
c. Whether Defendant should be enjoined from engaging in such conduct in
the future.

1 24. As a person that received numerous collection calls from Defendant using an
2 automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's
3 prior express consent, Plaintiff is asserting claims that are typical of The Class.

4 25. Plaintiff will fairly and adequately protect the interests of the members of The
5 Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

6 26. A class action is superior to other available methods of fair and efficient
7 adjudication of this controversy, since individual litigation of the claims of all Class members
8 is impracticable. Even if every Class member could afford individual litigation, the court
9 system could not. It would be unduly burdensome to the courts in which individual litigation
10 of numerous issues would proceed. Individualized litigation would also present the potential
11 for varying, inconsistent, or contradictory judgments and would magnify the delay and expense
12 to all parties and to the court system resulting from multiple trials of the same complex factual
13 issues. By contrast, the conduct of this action as a class action presents fewer management
14 difficulties, conserves the resources of the parties and of the court system, and protects the
15 rights of each Class member.
16
17
18

19 27. The prosecution of separate actions by individual Class members would create a
20 risk of adjudications with respect to them that would, as a practical matter, be dispositive of the
21 interests of the other Class members not parties to such adjudications or that would
22 substantially impair or impede the ability of such non-party Class members to protect their
23 interests.
24

25 28. Defendant has acted or refused to act in respects generally applicable to The
26 Class, thereby making appropriate final and injunctive relief with regard to the members of the
27 California Class as a whole.
28

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

29. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-28.

30. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

31. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

32. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

33. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-32.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

36. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227 et seq.**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

Respectfully Submitted this 9th Day of October, 2012.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff